

THE BERKSHIRE GAS COMPANY

**MOTION FOR PROTECTIVE TREATMENT
OF CONFIDENTIAL INFORMATION**

3. Pursuant to G.L. c. 25, §5D, the Department is authorized to “protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings” of the Department. G.L. c. 25, §5D establishes a three-part test for determining whether, and to what extent, information submitted by a party in the course of a Department proceeding may be protected from public disclosure. First, the

information for which protective treatment is sought must constitute "trade secrets, [or] confidential, competitively sensitive or other proprietary information." Second, the party seeking protective treatment must overcome the statutory presumption in G.L. c. 66, §10 that all such information is public information by "proving" the need for non-disclosure. Third, even where a party establishes the need for protective treatment, the Department may protect only so much of that information as is deemed necessary to meet the established need and may also limit the term or length of time such protection will be in effect. G.L. c. 25, §5D; The Berkshire Gas Company, D.T.E. 01-41, p. 16 (2001). The Department has developed several considerations that it has deemed appropriate with respect to the public interest assessment, including the interests at stake, the likely harm that could result from disclosure of such information and the public policy implications of such disclosure. See The Berkshire Gas Company, D.P.U. 93-187/188/189/190 (Interlocutory Order dated January 19, 1994); Essex County Gas Company, D.P.U. 96-105 (1996); The Berkshire Gas Company, D.T.E. 99-81 (1999) (Confidential treatment accorded to price and other terms of an asset management agreement); Boston Gas Company, D.T.E. 99-76 (1999) (Confidential treatment accorded to price and other terms of an asset management agreement); Bay State Gas Company, D.T.E. 98-79 (September 23, 1998 Public Hearing, Tr. at 9-10) (Confidential treatment accorded to pricing provisions of a contract for LNG).

4. Berkshire seeks protective treatment only for the pricing provisions of its approved sales agreements as reflected in invoices included with the reconciliation analysis (Attachment A) prepared in connection with its GAF proposal.

5. Berkshire submits that it would be highly inappropriate if price and similar competitive information was made available to the competitors of suppliers and transporters providing service to the Company, particularly in light of the fact that many of these price terms have previously been granted confidential treatment in Department proceedings reviewing the

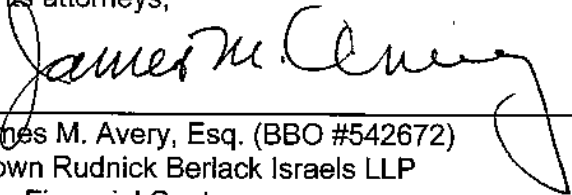
underlying agreements. In addition, public disclosure may also place Berkshire at a bargaining disadvantage in future negotiations with potential suppliers and transporters because such entities would be less likely to negotiate advantageous contracts if they knew the exact price or value of Berkshire's current resources and could use such information as a benchmark in making offers to the Company. This concern is particularly important to Berkshire as it will be seeking competitive bids to replace gas supply and transportation contracts on a continuing basis. It is also far more effective and equitable for the Company and its customers if a given service provider or supplier is uncertain how much one of its competitors will be willing to compromise on price or other important terms and conditions. In such a situation, that provider or supplier is more likely to provide more favorable terms to the Company and its customers in order to ensure that it makes the sale. Accordingly, public exposure of these pricing matters would adversely affect the Company through the inability to obtain advantageous services and pricing provisions in the future that could possibly result in higher prices for gas service to the Company's customers. Finally, failure to provide protection of the confidential pricing information in the referenced materials could not only serve to decrease the Company's future negotiation leverage, it could also have a chilling effect upon the marketplace in Massachusetts with respect to regional, national and international market participants. This concern is particularly sensitive given the fact that other LDCs executed contracts similar to the agreement reflected in the invoices in Massachusetts and other jurisdictions so that there is the potential for wider and more substantial harm if protective treatment is not accorded to these materials. The Department has recognized these same concerns in finding that "protective treatment of such competitively sensitive, confidential and proprietary information as contractual pricing provisions, compensation benchmarks and bids are appropriate because disclosure may affect future negotiations by either constraining the willingness of entities to offer better or more innovative terms for gas procurement than are currently proposed, or limit the future bargaining ability of the Company." Berkshire Gas, D.T.E. 01-41, p. 17.

Accordingly for the reasons stated herein, Berkshire respectfully requests that the Department grant this motion for protective treatment of confidential information with respect to the specified materials.

Respectfully submitted,

THE BERKSHIRE GAS COMPANY

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